

**Prepared Testimony
Of
Professor William Wagner
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**Before the
Michigan House of Representatives Committee on Education**

June 7, 2006

Distinguished Chair and Members of the Committee: Thank you for inviting me to testify today on the constitutionality of House Bill 5251, specifically as to whether the proposed amendment to the "the revised school code," *1976 PA 451 section 1278 (MCL 380. 1278)*, as amended by *2004 PA 596*, violates the Establishment Clause of the First Amendment to the United States Constitution.

My name is William Wagner and I currently serve as a Full Professor of Law with Tenure at the Cooley Law School, where I teach Constitutional Law and serve as the Director of the Center of Ethics & Responsibility. Prior to joining academia I served as a judge in the United States Courts, a senior assistant U.S. attorney in the United States Department of Justice, and as a legal counsel in the United States Senate. Many years ago I also served as the chief counsel to the Michigan Senate Judiciary Committee.

Preliminarily, I wish to thank the Chair for holding this hearing. I also wish to express appreciation to the sponsors of HB 5251 for proposing legislation that ensures our children will learn and can apply the scientific method in the pursuit of scientific truth in an educational environment.

THE PROVISIONS OF HOUSE BILL NO. 5251

DO NOT VIOLATE THE UNITED STATES CONSTITUTION

The First Amendment to the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” U.S. Const. Amend. I

I have read the proposed amendment to “the revised school code” in HB5251. The provisions direct the State Board to “revise the recommended model core academic curriculum content standards in science to ensure that pupils will be able to... use the scientific method to critically evaluate scientific theories... [and to] use scientific data to assess the validity of those theories and to formulate arguments for or against those theories.” The proposed legislation illustrates the theories covered by the legislation by listing two as examples.

Although various legal scholars and Justices of the United States Supreme Court employ different approaches in interpreting the Establishment Clause of the First Amendment, (see, Chemerinsky, Constitutional Law, Chapter 12) it is my opinion that that this legislation does not violate the Establishment Clause under any approach, and, more importantly, is not inconsistent with current U.S. Supreme Court First Amendment jurisprudence.

By the plain language of HB 5251 it is clear that nothing in the language endorses a religion or establishes a church or coerces religious participation or favors one religion over another. By the plain language of HB 5251 it is also clear that the provisions clearly

have a secular purpose (the learning and application of the scientific method). It is further clear that its principal effect is one that neither advances nor inhibits religion – and indeed, by its express language, does not even mention or have any connection to religion. Finally, it is also clear from the language that the provisions do not in any way foster an excessive government entanglement with religion. The provisions of HB 5251 are, therefore, Constitutional.

Thank you for this opportunity to provide testimony on the constitutionality of the proposed amendment to the “revised school code.”